

**State of California
Delta Stewardship Council**

**Proposed Amendment
California Code of Regulations, Title 23. Water
Division 6. Delta Stewardship Council
Chapter 2. Consistency with Regulatory Policies Contained in the Delta Plan
Article 1. Definitions §5001. (dd) “Significant impact”
(3). Temporary water transfers of up to one year in duration**

Initial Statement of Reasons

Introduction

This statement addresses the Delta Stewardship Council’s proposal to amend the definition of “significant impact” for the purpose of determining whether a project meets the definition of a “covered action” within the meaning of the Delta Reform Act, Water Code section 85000 *et seq.* (Delta Reform Act). Temporary water transfers of up to one year in duration constitute one of the categories of projects determined not to have a significant impact and are therefore outside of the definition of a “covered action”. This provision within the current regulation is in effect through December 31, 2016. The proposed amendment would remove this “sunset” date and make the determination of no significant impact for temporary water transfers of up to one year in duration, alternatively referred to as single-year water transfers. The proposed amendment would therefore have the effect of exempting single-year water transfers from review by the Delta Stewardship Council for consistency with regulatory policies contained in the Delta Plan.

Background and Authority

The Sacramento-San Joaquin Delta Reform Act of 2009, Water Code section 85000 *et seq.* (Delta Reform Act) requires the Delta Stewardship Council (Council) to adopt a legally-enforceable, comprehensive management plan for the Delta to further the “coequal goals”. It defines the coequal goals to mean “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Water Code section 85054.)

The Delta Reform Act requires any state or local agency that proposes to undertake a covered action to submit a certification of consistency with findings that set forth the reasons the covered action is consistent with the Delta Plan. The Council has appellate authority with regard to the certification. The Delta Reform Act defines the term “covered action” to refer, in part, to a project that “[w]ill have a *significant impact* on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.” (Water Code section 85057.5(a)(4) [emphasis added]). The Delta Reform Act does not define the term “significant impact.”; however adopted regulations define the term which includes certain categories for projects the Council determined would not have a significant impact, including single-year water transfers with a specified time frame (see 23 CCR 5001(dd)(3)).

Problem Description and Purpose of the Proposed Regulatory Amendment

The Delta Plan recognizes that water transfers that occur in whole or in part in the Delta can be an important tool for improving water supply reliability. However, at the time it developed the Delta Plan, the Council recognized the value of developing an interim approach to single-year water transfers while it researched the issue of potential impacts further and refined its regulation. With this goal in mind, and in light of the substantial evidence in the administrative record, the Council determined that single-year water transfers occurring between the date of the adoption of the Delta Plan and the end of 2016 would not have a significant impact on the coequal goals.

In reaching this determination, the Council was mindful that Water Code section 109(a) declares that it is “the established policy of this state to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import”. The Council was also aware that sister agencies already had frameworks for reviewing certain single-year water transfers.

At its March 25, 2015 meeting, the Council discussed a list of priority tasks to be completed in 2015. One of those tasks was to review and update Delta Plan Water Transfer policies and recommendations by December 2015. This task included a review of the temporary exemption for single-year water transfers and a recommendation of new or refined Delta Plan water transfer provisions with the acknowledgement that the current exemption would be eliminated, or sunset, after December 31, 2016.

In response to this priority task, the Council discussed amending the single-year water transfers determination at four meetings over the course of 2015. At these meetings, the Council received additional information on single-year water transfers, including in the form of public comments and in the form of presentations from subject matter experts. Following this review, at the December 17, 2015 meeting, the Council adopted a description of the Proposed Project for purposes of conducting environmental review and proposing regulatory amendment.

Technical and Empirical Studies, Reports, or Documents

Delta Plan, Programmatic Environmental Impact Report for the Delta Plan (Delta Plan PEIR), and Addendum to the Delta Plan PEIR

In May 2013, the Council adopted the current Delta Plan which is a comprehensive long-term management plan for the Delta, after adopting the Final Programmatic Environmental Impact Report for the Delta Plan (Delta Plan PEIR).

The Delta Plan includes extensive descriptions and analyses of the problems facing the Delta, 14 regulatory policies and related definitions that are binding, and 73 recommendations. The policies are codified in the California Code of Regulations (CCR), CCR section 5001 *et seq.* Within the regulatory definitions, the Council included a definition for the term “significant impact.” That definition provides: “‘Significant impact’ for the purpose of determining whether a project meets the definition of a ‘covered action’ under section 5001(j)(1)(D) means a substantial positive or negative impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta, that is directly or indirectly caused by a project on its own or when the project's incremental effect is considered together with the impacts of other closely related past, present, or reasonably foreseeable future projects.”

The definition then determines that four categories of actions do not have a significant impact. One of these categories is for single-year water transfers occurring between the date of the adoption of the Delta Plan and December 31, 2016. Specifically, the definition states:

(dd) The following categories of projects will not have a significant impact for this purpose....

Temporary water transfers of up to one year in duration. This provision shall remain in effect only through December 31, 2016, and as of January 1, 2017, is repealed, unless the Council acts to extend the provision prior to that date. The Council contemplates that any extension would be based upon the California Department of Water Resources' and the State Water Resources Control Board's participation with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers and protect water rights and environmental resources by December 31, 2016. These recommendations should include measures to address potential issues with recurring transfers of up to 1 year in duration and improved public notification for proposed water transfers. (23 CCR section 5001(dd)(3)).

This subsection of the regulation states the Council's determination that single-year water transfers occurring within the designated time span would not have a significant impact on the coequal goals, and would therefore not fit the statutory definition of a covered action. Accordingly, such transfers would not be required to file certifications of consistency with the Delta Plan, because that requirement only applies to covered actions. Single-year water transfers occurring after the December 31, 2016 sunset date would be subject to the Council's review, provided that they meet all the statutory criteria for a covered action.

The Council took this approach toward single-year water transfers because, at the time it was developing the Delta Plan, it had substantial evidence that single-year water transfers could have a significant impact on the coequal goals, as well as substantial evidence that single-year water transfers would not have a significant impact on the coequal goals. This evidence was comprehensive, informative, and authoritative, but it was not conclusive. The Council thus attempted to strike a balance by exempting single-year water transfers from review for the limited period after adoption of the Delta Plan and before the sunset date while, in the meantime, collaborating with sister agencies and stakeholders to gather further information about single-year water transfers and potentially revise this subsection of the regulations.

In particular, the Council had questions about the cumulative impacts of single-year water transfers. During the development of the Delta Plan, certain commenters stated that, even if single-year water transfers did not have a significant impact on their own, they could have a significant impact in the aggregate. These commenters raised this as a largely theoretical argument. They presented evidence that single-year water transfers occurred, but not that their impacts were cumulatively significant. To account for such potential cumulative impacts; however, the Council limited the duration of its initial exemption for water-transfers to a period of approximately three years and seven months, thus limiting the extent to which any potential cumulative impacts could occur.

In addition, certain commenters raised concerns that the same parties engaged in single-year water transfers over the course of multiple years and that these single-year water transfers amounted to recurring transfers that had the same magnitude of impacts and deserved the same level of scrutiny as longer-term transfers. These commenters alleged that transferring parties structured what would otherwise be longer-term transfer as series of single-year water transfers solely to avoid greater oversight. The commenters presented evidence of the same parties engaging in multiple single-year water transfers, but they presented no evidence regarding the parties' intentions.

To gather further evidence about single-year water transfers – including about potential cumulative impacts and alleged recurring transfers – the Council included language in the definition of “significant impacts” that encouraged the Department of Water Resources (DWR), State Water Resources Control Board (SWRCB), and others to develop recommendations for potential impacts to the Council's regulation of single-year water transfers. To incentivize the agencies to act quickly, and to ensure that it received their recommendations before the end of the sunset period, the Council expressly requested that the agencies provide their recommendations by December 31, 2016.

Pursuant to the Council's requests, DWR and SWRCB consulted with the Council and provided it with two specially prepared reports: (a) *Report on Background and Recent History of Water Transfers in California*, and (b) *Water Transfers and the Delta Plan*. These reports complemented the materials that the Council reviewed during the development of the original Delta Plan and that were included in the administrative record for the original Delta Plan and Delta Plan PEIR.

Although the alleged intentions of transferring parties would not affect whether their transfers would have a significant impact on the coequal goals, the Council, as part of its diligence, investigated so-called recurring transfers in further detail. Recurring water transfers were discussed at the Council meetings in 2015 and the Council considered the reports prepared by DWR and SWRCB. These discussions and reports found that recurring transfers may exist as a theoretical concept but not as a practical reality. The presenters at the Council meetings explained that each transfer is unique with respect to the water sources, volumes of transfer water available and needed, parcels of land participating in providing and using the transferred water, and available capacity in State Water Project (SWP) and Central Valley Project (CVP) facilities for cross-Delta water transfers. The water transferors and the users of the transferred water need to annually assess the feasibility of water transfers with respect to a determination of the availability of other water supplies that would be less costly and easier to obtain; availability of SWP and CVP water supplies based upon the preliminary and final SWP and CVP water allocations in March and April, respectively; and the availability of conveyance capacity in the SWP and CVP facilities which is determined in April based upon final contract water allocations. Because these factors change each year, there does not appear to be any pattern to the recurring use of the same methods or geographic locations to provide transfer water under single-year water transfers.

At the same time, other commenters presented evidence regarding the important contribution of water transfers to water supplies and the existing regulatory controls over water transfers. These same commenters raised concerns that the need for single-year water transfers is often time-sensitive (due to growing seasons, regulatory constraints, or other factors) and an appeal to the Council could prevent certain transfers from proceeding according to the transferring parties' preferred time frames.

Over the course of 2015, the Council discussed amending the single-year water transfers determination at four Council meetings: July 23, September 24, November 19, and December 17. At these meetings, the Council received additional information on single-year water transfers, including in the form of public comments and in the form of presentations from subject matter experts. Following this review, at its December 17, 2015 meeting, the Council considered two versions of the Proposed Project and adopted the description of one of them – known as Option 1 – for the purpose of conducting environmental review. The Draft Addendum to the Delta Plan PEIR (PEIR Addendum) was prepared to address this proposed amendment on single-year water transfers. The PEIR Addendum was posted on the Council website for a 30-day public review period ending on June 13, 2016.

Proposed Amendment to the Existing Regulation

The Proposed Project adopted by the Council would amend the existing definition of “significant impact” by eliminating the sunset date for the determination regarding single-year water transfers. That amendment would change the definition as follows:

(dd) “Significant impact” for the purpose of determining whether a project meets the definition of a “covered action” under section 5001(j)(1)(D) means a substantial positive or negative impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta, that is directly or indirectly caused by a project on its own or when the project's incremental effect is considered together with the impacts of other closely related past, present, or reasonably foreseeable future projects. The following categories of projects will not have a significant impact for this purpose...

(3) Temporary water transfers of up to one year in duration. ~~This provision shall remain in effect only through December 31, 2016, and as of January 1, 2017, is repealed, unless the Council acts to extend the provision prior to that date. The Council contemplates that any extension would be based upon the California Department of Water Resources' and the State Water Resources Control Board's participation with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers and protect water rights and environmental resources by December 31, 2016. These recommendations should include measures to address potential issues with recurring transfers of up to 1 year in duration and improved public notification for proposed water transfers.~~

Economic Impact Analysis/Assessment

Attachment 1, Economic Impact Analysis/Assessment (EIA) has been prepared in support of this Initial Statement of Reasons and the STD. 399, Economic and Fiscal Impact Statement. The Council has relied upon the EIA in proposing the regulatory action. Council staff has consulted with the California Department of Finance and agreed that the proposed regulatory action is not a major regulation as defined in §2000 (g), Title 1, Division 3, Chapter 1, of the California Code of Regulations.

Benefits of the Proposed Regulatory Amendment

The proposed amendment would allow affected persons to avoid the potential cost of covered action compliance that could result from expiration of the exemption after 2016. This avoided cost is presented as a quantifiable benefit of the proposed amendment in the EIA (Attachment 1) and in STD. 399, Economic and Fiscal Impact Statement.

Another potential benefit from the proposed amendment, albeit unquantifiable, is the economic benefit of a more reliable water supply that may accrue to the agencies that secured these transfers. Single-year water transfers have been used to augment supplies during droughts or other shortage conditions, allowing local water users to avoid more costly water supply or more severe shortage. As described in the Recirculated Draft Program Environmental Impact Report (PEIR) Addendum, the transfer action could reduce the amount of withdrawals from groundwater or surface storage reservoirs used by the purchasers during the year that the single-year water transfer occurred. This action would provide flexibility for the use of this water in subsequent periods of time, thereby increasing water supply reliability throughout the duration of the single-year water transfer and possibly in subsequent years when the stored water would be available for future uses.

The proposed amendment could potentially provide a benefit to the State's environment if a single-year transfer were used to support an environmental water use or avoid an environmental impact. As described in the PEIR, water transferred from north of the Delta through the Delta could improve ecosystem conditions of wetlands and riparian communities along the Delta channels due to a temporary increase in fresh water flows in the Delta, especially in the late summer months.

Reasonable Alternatives to the Proposed Regulatory Amendment on Definition of *Significant Impact* Related to Single-year Water Transfers

As described in the PEIR Addendum, two alternatives to the proposed regulatory amendment (i.e., Option 1) were considered by the Council:

- At the November 19, 2015 Council meeting, an alternative known as Option 2 (essentially a no action alternative) was proposed by staff. The alternative would leave the current regulation intact, allowing the determination of no significant impact for single-year transfers to expire on December 31, 2016. Option 2 was discussed by the Council, but rejected for further consideration. At this meeting, certain Council members requested that staff return to the next month's meeting prepared to advise the Council regarding a proposed Option 1(a), as follows.
- At the December 17, 2015 meeting, staff proposed an alternative known as Option 1(a). Option 1(a) would amend the current regulation by extending the determination of no significant impact for single-year water transfers and postponing the sunset until December 31, 2019.

After consideration of public comments and discussion among the Council members, a majority of the Council members agreed that the periodic (5-year) Delta Plan review and update process required by California Water Code section 85300, subdivision (c) would allow the Council to reconsider changes to the Delta Plan regulatory policies (including the single-year water transfer regulatory policy) if new information related to cumulative effects of single-year water transfers became available. The Council then voted to proceed with Option 1, the proposed regulatory amendment to remove the sunset date, as the Proposed Project for the purposes of environmental review under CEQA (subject of the PEIR Addendum).

Rationale for the Council's Initial Determination that the Proposed Regulatory Amendment is Reasonably Necessary

The Council initially determines that the proposed amendment to the definition of *significant impact* related to temporary water transfers of up to one year in duration is reasonably necessary to carry out the purposes of the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. It is also necessary to amend this regulation ahead of the sunset date of December 31, 2016.

The Council's initial determination is that no reasonable alternatives considered by the Council or that have otherwise been identified and brought to the attention of the Council would be more effective in carrying out the purpose for which the regulatory amendment on the definition of *significant impact* related to single-year water transfers is proposed; or would be as effective and less burdensome to affected private persons than the proposed regulatory amendment; or would be more cost-effective to affected private persons and equally effective in implementing the regulatory policies contained in the Delta Plan in order to achieve the coequal goals as enumerated in the 2009 Delta Reform Act.

The proposed regulatory amendment is an extension of the existing regulatory policy that single-year water transfers are not covered actions and, therefore, do not require certification of consistency with the Delta Plan. This extension of the existing condition would neither increase the level of effort by single-year water transfer proponents, nor result in additional costs to the single-year water transfer proponents or the Council, nor cause a burden to affected private persons.

One alternative considered (Option 2 described above) would take no regulatory action, resulting in the expiration of the exemption of single-year transfers. This alternative would increase the level of effort by the single-year water transfer proponents in filing and by the Council in potentially hearing appeals on certifications of consistency with the Delta Plan, resulting in additional costs to affected persons. Furthermore, single-year water transfers need to be completed within narrow windows of time, in order to

fit within the constraints of regulatory requirements on Delta pumping operations, availability of supplies for transfer, timing of demand such as agricultural growth seasons, and availability of conveyance and storage capacities. Requiring single-year transfers to comply with covered action certification and potential appeals would place an additional time constraint that could cause delays or render these transfers impracticable in certain cases. Delays or abandonment could result in stranded investments and additional costs to seek replacement water supplies. The proposed action would allow affected persons to avoid this cost.

Another alternative to extend the exemption to December of 2019 (Option 1(a) described above) would be equivalent in cost and burden to the proposed action until December 2019, and either the same or more costly afterward, depending on Council's future actions. The statutory mandate to review and revise as needed the Delta Plan every five years (Water Code section 85300, subdivision (c), described above) ensures that any new information about effects of single-year water transfers will be considered by the Council in making any necessary regulatory amendments.

Results of the Economic Impact Assessment and the Council's Initial Determinations

Based on the EIA (Attachment 1), the Council makes the following initial determinations:

- The proposed amendment will not affect the creation or elimination of jobs within California.
- The proposed amendment will not affect the creation of new businesses or elimination of existing businesses within California.
- The proposed amendment will not affect the expansion of businesses currently doing business within the State.
- The proposed amendment may benefit the health and welfare of California residents, worker safety, and the State's environment through improvements in water supply reliability.

Non-Duplication

The proposed amendment does not repeat or rephrase, or conflict with, in whole or in part, a State or federal statute or regulation. The Council made specific efforts to coordinate and solicit advice from other State and federal agencies in developing this proposed amendment.

Attachment 1

Economic Impact Analysis/Assessment

This Economic Impact Analysis (EIA) for the Amendment to Delta Plan regulation describes and estimates of costs, benefits, and other potential economic impacts of the proposed amendment, as required by Government Code Section 11346.3(b). This analysis also supports the preparation of the Economic and Fiscal Impact Statement (STD. 399).

Introduction

This EIA is in support of the Council's proposal to amend the definition of "significant impact" for the purpose of determining whether a project meets the definition of a "covered action" within the meaning of the Delta Reform Act, Water Code section 85000 *et seq.* (Delta Reform Act). Temporary water transfers of up to one year in duration constitute one of the categories of projects determined not to have a significant impact and are therefore outside of the definition of a "covered action". This provision within the current regulation is in effect through December 31, 2016. The proposed amendment would remove this "sunset" date from the determination of no significant impact for temporary water transfers of up to one year in duration, alternatively referred to as single-year water transfers. The proposed amendment would therefore have the effect of exempting single-year water transfers from review by the Council for consistency with regulatory policies contained in the Delta Plan.

Cost Analysis

The proposed regulatory amendment is an extension of the existing regulatory policy that single-year water transfers are not covered actions and, therefore, do not require certification of consistency with the Delta Plan. However, this exemption will expire on December 31, 2016. Relative to the existing practice in place since 2013, this extension would neither increase the level of effort by single-year water transfer proponents, nor result in additional costs to the single-year water transfer proponents or the Council, nor cause a burden to affected private persons. Relative to no rulemaking action (the exemption ends, designated as Option 2 below), the proposed extension would result in savings (avoided costs) to state and local agencies. Therefore, the proposed action is the most cost-effective regulatory measure that is equally effective in achieving the purpose of the regulation in a manner that ensures full compliance with the Delta Reform Act. In order to compare the proposed amendment to other alternatives considered, the analysis below calculates reasonable costs of consistency certification.

One alternative to the proposed amendment would be to extend the covered action exemption to December of 2019 (Option 1(a) described in the Initial Statement of Reasons and Alternative 1 in STD. 399). This alternative would be equivalent in cost and burden to the proposed action until December 2019, and either the same or more costly afterward, depending on the Council's future actions.

Another alternative considered but rejected by the Council (Option 2 described in the Initial Statement of Reasons and Alternative 2 in STD. 399) would take no regulatory action, resulting in the expiration of the exemption of single-year transfers. This alternative would increase the level of effort by the single-year water transfer proponents in filing and by the Council in potentially hearing appeals on certifications of consistency with the Delta Plan, resulting in additional costs to affected persons. Furthermore, single-year transfers would need to be executed within a critical, three-month window of time during the year. Additional regulatory actions beyond those already imposed by other agencies including the Department of Water Resources and the State Water Resources Control Board could add additional time that might

render the proposed transfer infeasible. The estimated cost of this alternative is presented in the subsequent section of this document. The proposed action would allow affected persons to avoid this cost.

Cost Analysis of Option 2, No Regulatory Action

The following cost analysis is based on information and estimates provided in the November 2012 *Cost Analysis for Proposed Delta Plan Regulations in Support of Economic and Fiscal Impact Statement* (2012 Cost Analysis). Those estimates are made specific to the expected number and kind of activities needed for consistency certification costs for single-year transfers. Also, the unit costs are escalated from the 2012 estimates to recent (end-of-year 2015) price levels.

Costs to Local and State Agencies to Demonstrate Consistency of Covered Actions

If no regulatory action is taken, the exemption of single-year transfers from covered actions would expire. State and local agencies proposing single-year transfers that meet the definition of a “covered action” would need to obtain certification from the Council that the transfers are consistent with the regulatory policies contained in the Delta Plan and codified in the California Code of Regulations. Lead agencies might also need to document that the best available science was used in the analysis, include applicable feasible mitigation measures, and prepare adaptive management plans consistent with the Delta Plan, including the authorities and resources necessary to implement the plans.

Costs to Local and State Agencies to Respond to Appeals Regarding Council Certification

If other agencies or individuals appeal a Council decision on covered action consistency, the lead agency must submit additional information and analysis to support the submittal. The Council would hold an appeal hearing and provide written findings. If the appeal is upheld, the lead agency would need to revise the proposal and resubmit.

Costs to the Council and its Staff to Review and Certify Consistency of Covered Actions

The Council would incur costs for administering the certification process including pre-submittal consultation, review, and potential appeals.

Costs to Local and State Agencies due to Delays or Abandonment

Single-year water transfers need to be completed within narrow windows of time, in order to fit within the constraints of regulatory requirements on Delta pumping operations, availability of supplies for transfer, timing of demand such as agricultural growth seasons, and availability of conveyance and storage capacities. Requiring single-year transfers to comply with covered action certification and potential appeals would place an additional time constraint that could cause delays or render these transfers impracticable in certain cases. Delays or abandonment could result in stranded investments and additional costs to seek replacement water supplies.

Indirect Economic Impacts on Private Businesses and Individuals

Although Delta Plan regulations and administrative requirements apply to State and local agencies, private businesses and individuals could be affected indirectly through pass-through costs from lead agencies, as well as costs associated with delays or abandonment of transfer proposals.

Estimated Costs Associated with Covered Action Certification

Based on information provided to the Council and summarized in its Draft Addendum to the Delta Plan Programmatic Environmental Impact Report (Draft Addendum)¹, SWRCB reviewed a total of 10 single-year transfers in 2014. DWR approved 13 single-year water transfers through the Delta in 2014, 6 of which were also reviewed by SWRCB and 7 of which were not. Therefore 17 unique, single-year water transfers through the Delta were reviewed and approved by these agencies during 2014, which was a very active water transfer year. In 2015, SWRCB reviewed 9 single-year transfers. DWR approved 5 single-year transfers, 1 of which was not reviewed by SWRCB. Therefore 10 single-year transfers were reviewed and approved by these agencies in 2015. Few or no single-year transfers occur in some years, especially in the wetter years when available capacity in the SWP/CVP facilities is limited and the demand for transfers is low. The analysis below assumes that an average or typical number of single-year transfers through the Delta is 10, with potentially as many as 20 such transfers in years of greater transfer activity. A single-year water transfer could implicate four Delta Plan regulatory provisions if the single-year exemption were allowed to sunset: §5002: Detailed findings to establish consistency with the Delta Plan, §5003: Reduce reliance on the Delta through improved regional water self-reliance, §5004: Improved transparency in water contracting, and §5005: Update Delta flow objectives.

1. Estimated Costs to the Council:

Based on the November, 2012 Cost Analysis which used the Council's planned fiscal year 2013-14 budget, the average cost of each covered action consistency certification was estimated at \$17,500 in 2012 dollars. Applying a Consumer Price Index (CPI) escalation factor of 1.0293², a covered action is estimated to cost about \$18,000 in end-of-year 2015 dollars.

Assuming an average of 10 single-year water transfers covered action consistency applications per year, the annual cost of consistency determination to the Council would be \$180,000.

Assuming potentially up to 20 proposed transfers in the drier years, the annual cost of consistency determination could be as high as \$360,000.

2. Estimated Costs to the State or local agency:

Based on the November, 2012 Cost Analysis, preparing for a covered action consistency determination was estimated to cost \$5,950 in 2012 dollars if two policies were affected and required analysis; or about \$25,690 if eight policies were affected. These cost estimates include the applicant's cost of preparing the certification, adaptive management, and potential appeal. For a single-year transfer that would require consistency demonstration for four Delta Plan regulatory policies, the cost per transfer would be \$12,530 per transfer.

Applying a CPI escalation factor of 1.0293, a covered action consistency application is estimated to cost about \$12,900 in 2015 dollars.

Assuming an average of 10 single-year water transfers covered action applications per year, the annual cost of consistency preparation to the State or local agencies would be \$129,000.

¹ Delta Stewardship Council, 2016. Draft Addendum to the Delta Plan Programmatic Environmental Impact Report. Sacramento, CA. May, 2016. Available at: <http://deltacouncil.ca.gov/delta-plan-programmatic-eir>

² US. Bureau of Labor Statistics. 2016. Consumer Price Index for All Urban Consumers: All Items. Seasonally Adjusted, Annual End-of-Period. Washington, D.C. Available at: <https://research.stlouisfed.org/fred2/series/CPIAUCSL>. The index value in December of 2012 was 231.272 and in December of 2015 was 238.041, resulting in an escalation factor of 1.0293.

Assuming a higher number of proposed transfers in the drier years 20 per year, the annual cost of consistency preparation to the State or local agencies would be \$258,000.

Total costs among all agencies would be \$309,000 per year on average, and up to \$618,000 in drier years with a larger number of transfers. These costs do not include any potential “stranded investment” costs of abandoned proposals because the proposed actions cannot be made to pass the consistency determination, or abandoned due to delays that render the transfer infeasible. In addition, these estimates do not include the costs of replacement water supplies due to abandoned transfer proposals.

Estimated Costs Associated with Proposed Amendment

The costs estimated above for Option 2 would ***not be incurred*** under the proposed amendment, because single-year transfers would continue to be excluded from the definition of covered actions.

Benefit Analysis

Compared to existing condition, the proposed amendment would simply continue the current practice, so no benefit (or cost) would result. However, compared to Option 2 (no regulatory action), the proposed amendment would provide a benefit to affected entities. If the Council takes no regulatory action, the exemption of single-year transfers would expire, with the result that such transfers, if they meet the definition of a covered action, would require demonstration of consistency and the associated costs shown above. If the exemption were extended to 2019, as envisioned in Option 1(a) considered by the Council, then that alternative would also avoid the consistency certification costs for the period 2016 through 2019.

Other Potential Economic Impacts

The proposed amendment to the Delta Plan’s definition of significant impact related to single-year water transfers could potentially encourage the expansion of the market for single-year transfers, by removing the uncertainty associated with the expiration date currently in the Delta Plan regulation. The potential for expansion of single-year transfers and the potential economic impact are addressed in the Draft Addendum.

Market expansion of through-Delta transfers is substantially limited by pumping capacity and environmental restrictions. According to the Draft Addendum, “The biological opinions ... limit the total amount of water transferred through SWP and CVP facilities.” Much of the limited transfer capacity is already used by long-term transfers, and that is expected to continue and perhaps increase. However, to the extent that the number and/or volume of single-year transfers could increase under the proposed amendment, potential impacts are possible.

Agencies involved in transfers through the Delta already must consider the potential impact of the transfer, irrespective of whether the Delta Plan regulation requires a certification of consistency. The review and approval processes of DWR (for use of State Water Project conveyance facilities), and Reclamation (for Central Valley Project transfers) are described in the Draft Addendum. The Draft Addendum summarizes:

“Evaluation of water transfers that rely upon SWP conveyance facilities or are approved by Reclamation must consider the economic effects on the geographical areas of the water transferors.”

For transfers through the Delta that do not rely on DWR or Reclamation facilities, the SWRCB must review and approve. The Draft Addendum states:

“The SWRCB must issue determinations, within 35 days of initiating the investigations or publication of the notices, whichever is later if protests are not filed, whether or not the water transfers would injure any legal user of the water; and would not unreasonably affect fish, wildlife, or other instream beneficial uses (Water Code section 1726).”

These review and approval processes cannot guarantee that no economic impacts will occur, but they reduce the chance that transfers causing large impacts to local economies would be approved.

Purchasers of single-year transfers have been and are anticipated to be, water suppliers that are public agencies or regulated public utilities. The proposed amendment extends a current regulatory policy that exempts certain single-year water transfers from determination of consistency with the Delta Plan. Therefore, if a future participant in a single-year transfer were a small business, the exemption would provide a cost savings.

Summary Results of the Economic Impact Analysis/Assessment

The proposed amendment is an extension of the existing condition that single-year water transfers are not included in the statutory definition of a covered action and therefore do not require certification of consistency with the Delta Plan. This extension of existing condition would neither increase the level of effort by single-year water transfer proponents, nor result in additional costs to the single-year water transfer proponents or the Council, nor cause a burden to affected private persons. Without the extension, some single-year transfers may be covered actions, agencies proposing such transfers would bear costs of certifying consistency, and the Council would bear costs of review and possible appeal. Relative to no extension, the proposed amendment would provide a future savings to local agencies and the state.

The proposed amendment could result in expanded interest in and use of single-year transfers by removing the uncertainty that the exemption would expire. Based on information presented in the Draft Addendum, no clear evidence exists that this will occur. However, if it did occur, existing review and approval processes for water transfers (by SWRCB, DWR, and Reclamation) are designed to avoid large economic impacts to local economies, thereby preventing any significant, statewide impact.

The proposed amendment will not affect the creation or elimination of jobs within California.

The proposed amendment extends indefinitely the current regulatory policy. Relative to expiration of the current policy, the consistency determinations avoided for a relatively small number of potential, single-year transfers affected would not affect staff levels for the Council or affected parties.

The proposed amendment will not affect the creation of new businesses or elimination of existing businesses within California.

The proposed amendment extends indefinitely the current regulatory policy. Relative to expiration of the current policy, the consistency determinations avoided for a relatively small number of potential, single-year transfers affected would not affect creation or elimination of businesses.

The proposed amendment will not affect the expansion of businesses currently doing business within the State.

The proposed amendment extends indefinitely the current regulatory policy. Relative to expiration of the current policy, the consistency determinations avoided for a relatively small number of potential, single-year transfers affected would not affect expansion of existing businesses.

Benefits of the regulation.

The proposed amendment may benefit the health and welfare of California residents through improvements in water supply reliability. The proposed amendment would not affect worker safety. The proposed amendment could provide a benefit to the State's environment if a single-year transfer were used to support an environmental water use or avoid an environmental impact.

Additional Summary Results Supporting the Economic and Fiscal Impact Statement (STD. 399)

The Council is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed amendment, as compared to the existing condition or to no regulatory action. Furthermore:

- The proposed amendment will not impose a mandate on local agencies or school districts that would require reimbursements.
- The proposed amendment will not result in fiscal impacts to State or local agencies or school districts.
- The proposed amendment will not have a significant effect on housing costs.
- The proposed amendment will not have a significant statewide adverse economic impact directly affecting business, including ability to compete.
- The proposed amendment will not require business reports to be made.
- The proposed amendment does not affect small businesses.
- The proposed amendment does not mandate the use of specific technologies or equipment, or impose any performance standards.